

# MEMORANDUM

September 14, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: WARREN R. WELLEN  
Principal Deputy County Counsel  
Public Works Division

RE: Surinder M. Manaktala v. County of Los Angeles  
Los Angeles Superior Court Case No. KC 044392

DATE OF  
INCIDENT: June 22, 2004

AUTHORITY  
REQUESTED: \$55,000

COUNTY  
DEPARTMENT: Department of Parks and Recreation

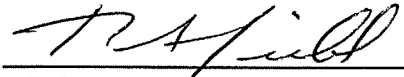
---


## CLAIMS BOARD ACTION:

☒ Approve

☐ Disapprove

☐ Recommend to Board of  
Supervisors for Approval

  
\_\_\_\_\_, Chief Administrative Office  
**ROCKY ARMFIELD**

  
\_\_\_\_\_, County Counsel  
**JOHN F. KRATTLI**

  
\_\_\_\_\_, Auditor-Controller  
**MARIA M. OMS**

on September 19, 2005

## SUMMARY

This is a recommendation to settle for \$55,000, a lawsuit filed by Surinder M. Manaktala, individually and d.b.a. SAI Power Management ("SAI"), for breach of contract arising from a construction project at Manzanita County Park performed by SAI.

## LEGAL PRINCIPLES

A public entity is liable for costs incurred by a contractor on a public works construction project due to inaccurate or misleading plans and specifications. A public entity is liable for costs incurred by a contractor on a public works construction project due to delays caused by the public entity.

## SUMMARY OF FACTS

This breach of contract lawsuit arises from a construction project at Manzanita County Park performed by SAI.

The scope of work on the project included demolition of an existing building and construction of the following:

- New activity building;
- Basketball court and baseball diamonds improvements;
- Picnic shade shelters;
- Walkways;
- Parking lot;
- Landscaping;
- Electrical improvements, including lighting for fields and parking lots; and
- Irrigation system.

The original contract price was \$1,712,800. The contract duration was 360 calendar days with an original construction completion date of March 17, 2002.

On March 22, 2001, the County issued a Notice to Proceed to SAI.

During the project, the County's inspectors rejected numerous items of work performed by SAI because the work failed to satisfy the plans and specifications. The County issued 42 notices of non-compliance and four notices to stop work to SAI.

SAI claims that in many cases the County erred in stopping the work and that the County was solely responsible for numerous delays to the project completion date.

During construction, the County issued 29 change orders to SAI, increasing SAI's contract amount by a total of \$170,061.

On August 21, 2003, almost one and a half years after the planned completion date, the County issued its final acceptance of the project.

On March 15, 2004, and on several dates thereafter, SAI presented claims to the County under the California Tort Claims Act seeking additional payment of approximately \$1.6 million. On June 22, 2004, SAI filed a complaint against the County in the Pomona branch of the Los Angeles Superior Court.

## DAMAGES

In its complaint, SAI claims damages totaling \$1,644,014, resulting from uncompensated extra work (\$459,514) and delay (\$1,184,500). During the litigation process, SAI revised that claimed damages amount upwards by approximately 20 percent.

SAI has claimed that it is entitled to extra compensation in connection with 55 separate items of work. Those work items include:

- \$190,450 for the cost of constructing security lights allegedly not included in the plans and specifications;
- \$48,000 for additional grading costs allegedly caused by errors in plans and specifications;
- \$23,220 for additional parking lot construction allegedly caused by errors in plans and specifications;
- \$34,680 for steel design for signs allegedly caused by errors in plans and specifications;

- \$90,000 for extra irrigation work allegedly not included in the plans and specifications; and
- \$16,470 for modification of window openings.

In addition, SAI has alleged that the County caused 313 calendar days of delay to the project. As claimed by SAI, the County-caused delays include 150 days for belated County approval of shop drawings for structural design, 139 days for rework of walkway construction, and 33 days for a County-issued notice to stop work. SAI claims that it is entitled to delay damages of between \$2,500 and \$4,000 per day as compensation for its home and field office overhead expenses.

## STATUS OF CASE

The proposed settlement was reached during mediation.

In light of the proposed settlement reached between the parties, the Court vacated the trial date previously set for September 6, 2005.

The County has incurred approximately \$95,000 in-house attorneys' fees and expert witness fees as of the present time.

## EVALUATION

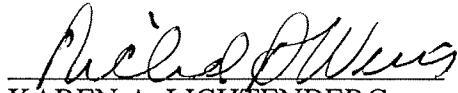
If this case proceeded to trial, it is likely that a trier of fact would find that SAI is entitled to extra compensation in connection with a few discrete items of extra work and delay. We believe, for example, that the trier of fact will likely determine that the County was responsible for some delays at the outset of the project in connection with the County's belated approval of structural steel shop drawings.

However, we feel that the County is in a strong position to defend against the majority of the extra work and delay claims asserted by SAI. We believe there is compelling evidence that much of the alleged extra work and delays were caused by SAI.

In preparing the defense of this matter, our office retained an experienced construction consultant who assisted us and the Department of Parks and Recreation in evaluating the potential merits of SAI's claims. As a result of those efforts, we believe we were successful in convincing the mediator and the contractor that the vast majority of his claims were unprovable and that even in those instances where the contractor might be entitled to damages, the claimed amounts were grossly overstated. Accordingly, we were able to negotiate a cents-on-the-dollar settlement which we believe reasonably reflects potential exposures of the County in the event of trial.

Given the considerable risks and costs associated with a jury trial, we recommend that this case be settled for \$55,000. The Department of Parks and Recreation fully concurs with this recommendation.

APPROVED:

A handwritten signature in black ink, appearing to read "Karen A. Lichtenberg", written over a horizontal line.

KAREN A. LICHTENBERG

Assistant County Counsel

Public Works Division

KAL:WRW:gm